



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : **LON/00AA/LDC/2014/0021**

Premises : **4,600 properties in the freehold ownership of the City of London Corporation**

Applicant : **The Mayor and Commonalty and Citizens of the City of London ("The City Corporation")**

Representative : **City Solicitors Department**

Respondents : **4,600 leasehold properties where the City of London Corporation is the landlord**

Representatives : **Recognised Tenants Associations for each Housing Estate, including the Barbican Estate and the Residents' Consultative Committee for the Barbican Estate**

Type of application : **To dispense with the requirement to consult lessees about a long-term agreement**

Tribunal members : **Mr L Rahman (Barrister)
Mrs A Flynn MA MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **31.3.14**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines it is reasonable to dispense with the relevant consultation requirements for the purposes of entering into contracts for the supply of electricity from 1.4.14 and 1.10.14 and for the supply of gas from 1.10.14.
- (2) The Tribunal refuses the application for a general dispensation from the consultation requirements for any further period.

The background

1. An application has been made under s.20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination that the remaining requirements to consult lessees in relation to the purchase and supply of electricity and gas contracts in April and October 2014 may be dispensed with if the Tribunal was satisfied it was reasonable to dispense with such requirements.
2. The Tribunal considered the application on 17.2.14 and determined the matter may appropriately be dealt with on the papers without an oral hearing with the Respondent lessees and their relevant tenants / lessees associations being given sufficient time to make their views known by completing an appropriate form as suggested by the Tribunal ("the form").
3. The Tribunal Directed that the Applicant shall send to each leaseholder and chairman / secretary of the recognised residents' associations and shall place a copy of the Directions and the accompanying form in the hall / notice board at the block and shall confirm to the Tribunal that that had been done. The Respondents were required, if they opposed the application, to write to the Tribunal using the form and indicating their reasons, by no later than 7.3.14. The Tribunal did not require a response from leaseholders who consented to the application.
4. The Tribunal is satisfied that the Respondents have had an opportunity to take part in the proceedings. The Tribunal received 14 responses. Ten were in favour of the application, two were against, and two forms were incomplete.
5. The Tribunal proceeded to determine the application on the papers in accordance with the Directions.

The law

6. Section 20 of the 1985 Act limits financial contributions of lessees in respect of qualifying long term agreements entered into by landlords unless the consultation requirements have been complied with or, alternatively, dispensed with by the Tribunal under s.20ZA(1). The test for dispensation is whether the Tribunal is satisfied that it is reasonable.
7. A "qualifying long term agreement" is, subject to certain exceptions which do not apply here, an agreement entered into by or on behalf of the landlord, for a term of more than 12 months (s.20ZA(2)).
8. The detailed consultation requirements for qualifying long term agreements, which in this case require a public notice, are set out in Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003. They apply to agreements which result in an individual lessee being required to contribute £100 or more.
9. There are two principal stages in the consultation process. The first, which the Applicant has complied with, is to serve a notice of intention setting out what is proposed and giving lessees an opportunity to inspect relevant documents and to make observations, to which the lessor must have regard (paragraphs 1-3 of Schedule 2 to the Regulations).
10. The second stage is to prepare a full detailed proposal which must be notified to all lessees so that they may make observations. It is this second stage from which the Applicant seeks dispensation.

The Applicant's case

11. The Applicant currently enjoys a gas and electricity supply that serves the majority of its residential Housing Estates. The contract for the supply of electricity terminates on 31.3.14 and 30.9.14. The contract for the current supply of gas terminates on 30.9.14. The contract value for the electricity supply commencing 1.4.14 is estimated to be £500,000 and the supply commencing 1.10.14 is estimated to be £692,977. The contract value for the gas supply commencing 1.10.14 is estimated to be £333,128.
12. The majority of long leaseholders pay less than £100 per annum for the provision of estate-wide electricity and gas. However, there are a considerable number who pay more and the number who pay more will increase as the price of the supply increases.
13. Bidding for the contracts and supplies to be obtained is done on behalf of the Applicant by The Local Authorities South East Region Energy Buying Group, known as 'LASER', of which the Applicant is a member. The group is managed by Kent County Council, who represents Local Authorities and other publicly funded bodies throughout the South East. There are

approximately 67 Local Authority members, including 25 London boroughs. LASER enters into a Flexible Procurement Agreement for a period of 5 years for larger consuming meters or a fixed term fixed price contract for smaller consuming meters. The fixed periods are generally in excess of 12 months and may exceed 18 or 24 months depending on the price. LASER will therefore in effect be bound under the 5 year Flexible Procurement Agreement to bulk buy on the wholesale market, but the amount of energy bought and for what period / duration will always depend on obtaining the best possible price.

14. As the utility market is a commodity market the price offered to the customer will only be offered for a limited period of time, primarily because generators and suppliers sell their products to traders in the market, where prices can go up or down. If the price increases whilst an offer is open to acceptance, it is often withdrawn to protect the generator / supplier, as they have the right to withdraw the offer price at any time prior to acceptance. Offers are usually open for acceptance until 4pm on a given day but it can be stipulated by the prospective supplier purchaser that the offer price be kept open for acceptance until a certain time and date. That will increase the risk to the generator / supplier of price fluctuations, which therefore reflects on the price offered. Essentially, the longer the period stipulated for acceptance, the less attractive and more expensive the price of the supply to the Applicant and long leaseholders.
15. The Applicant has already carried out the first stage of the consultation process, namely, the "Notice of Intention" stage (copies of the "Notice of Intention" letters have been provided by the Applicant). This was done to canvass the views of all the residents and endeavour to answer their questions and concerns. It is not possible, if a truly competitive price is to be obtained, to give long leaseholders the required 30 day second stage consultation period. Therefore, it is reasonable to dispense with the consultation requirements in relation to the contracts entered into by the Applicant through its membership of LASER for the supply of gas and electricity. If dispensation is granted, it will serve the long leaseholders' interests by obtaining lower prices.
16. The Applicant states it is likely the best possible price will be for a supply period of less than two years, possibly for 12, 15, or 18 months, depending on how the bids are structured and the prices available. To avoid a further application in 2 years' time, the Applicant wants dispensation from the consultation requirements for the duration of 5 years as opposed to a dispensation in relation to the forthcoming fixed period supply. The Applicant relies upon the decision of a differently constituted Tribunal concerning case reference LON/00AG/LDC/2006/0025 ("the Camden case").

The Respondent's case

17. No leaseholder applied to be a Respondent to this application. The Tribunal received 14 responses (ten were in favour of the application, two were against, and two forms were incomplete). None provided any reasons, except for the occupant of flat 11 Colechurh House, who stated "*In agreeing to the City of London request please note that we shall expect the landlord to find the best deal for leaseholders in their interests*".

The Tribunal's decision

18. The purpose of the procedure under s.20 of the 1985 Act is to ensure that the long leaseholders are consulted upon matters resulting in them having to pay costs in excess of £100 for any qualifying long term agreements entered into by the landlord. The legislation recognises that there may be instances of urgency where the lengthy consultation process, designed to give the long leaseholders full information and to enable them to make comments, cannot be followed and that is the reason for the dispensation provisions under s.20ZA of the 1985 Act.
19. In this instance, in order to be able to obtain the most competitive prices for gas and electricity, the Applicant needs to be able to act within hours. Waiting for the second stage of the consultation process to be completed, which will take 30 days, would severely limit the Applicants ability to obtain the best prices.
20. The Tribunal notes the overwhelming majority of those who could have become potential Respondents have not responded. The Tribunal understands this to mean they do not object to the application as the Tribunal directed that it did not require a response from leaseholders who consented to the application. Of those who did respond, the vast majority did not oppose the application.
21. For the reasons given, the Tribunal is satisfied it is reasonable to dispense with the relevant consultation requirements contained in s.20 of the 1984 Act.
22. The dispensation of any or all of the requirements of s.20 of the 1985 Act does not indicate that the cost itself is reasonable. The leaseholders may, if they wish, make a subsequent application under s.27A of the 1985 Act, challenging the recoverability of the cost under the lease or the level of the cost.
23. The Tribunal declines to grant the Applicant dispensation from all statutory consultation requirements for a 5 year period. The Tribunal notes the decision in the Camden case, however, that decision does not contain any legal reasoning justifying the order made.
24. The Tribunal notes the Applicant had made a similar request in two previous applications, both of which were refused (case reference

LON/00AA/LDC/2007/0028 and LON/00AA/LDC/2012/0011). The Tribunal agrees there is no basis for dispensation from the first stage. The Tribunal also agrees that simply making an assertion that it would be expedient to grant such a lengthy and non-specific dispensation is not persuasive. The requirement to issue a notice of intention and then come to the Tribunal for dispensation for each contract would not seem so onerous as to justify a departure from the clear statutory intention that consultation should be the norm and that any dispensation needs to be specifically justified. In the absence of any sound submissions to the contrary, the Tribunal does not believe it has jurisdiction to give blanket dispensations from all statutory requirements purely based upon hypothetical circumstances for such a long period of time.

25. There is no application for an order in respect of costs. Therefore, the Tribunal makes no order in respect of costs.

Chairman: L Rahman (signed electronically)

Date: 31.3.14